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JR

PATENT  
Attorney Docket No. 05638.0018

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
Jörg BERNARD *et al.* ) Group Art Unit: 1761  
Application No.: 10/088,602 ) Examiner: L. Wong  
Filed: August 23, 2002 )  
For: HARD CANDY WITH IMPROVED ) Confirmation No.: 6889  
STORAGE STABILITY )

**Mail Stop Appeal Brief--Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

Sir:

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT  
APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

Applicants respond to the Notification of Non-compliant Appeal Brief (37 C.F.R. § 41.37) mailed July 23, 2007, and request that the non-compliant status be withdrawn. As noted below, the Interview Summary mailed on August 20, 2007, states that "[t]he brief filed April 3, 2007, is compliant with respect to the summary. The second paragraph of the summary provides a concise explanation and support for Claim 1." The Interview Summary notes that agreement with respect to the claims was reached. In view of the decision of the Examiner, Applicants request that the non-compliant status be withdrawn. Below is a brief summary of the interview and a specific reference to the concise explanation and support for Claim 1.

**SUMMARY OF INTERVIEW**

Applicants thank Examiner Wong for the helpful telephonic interview on August 16, 2007. The Examiner and the undersigned discussed the Notification of Non-Compliant Appeal Brief mailed on July 23, 2007. The Notification indicated that the basis of non-compliance was that the brief allegedly did not contain a concise explanation of the subject matter defined in each of the independent claims. The only independent claim on appeal is Claim 1.

The Examiner and the undersigned discussed the second paragraph on page 8, which states: "In particular, the specification discloses a hard caramel with reduced water uptake containing 1,1-GPM (1-O- $\alpha$ -D-glucopyranosyl-D-mannitol) in an amount of 52 wt% to 60 wt% (based on the total dry solids of the hard caramel) and sorbitol in an amount of 0.5 wt% to 3.5 wt% (claim 1). (*Id.*, page 2, lines 15-18; page 3, lines 1-2.)." The Examiner indicated that this statement satisfies the requirement of 37 C.F.R. 41.37(c)(1)(v). As noted above, the Examiner's Interview Summary states: "The brief filed April 3, 2007 is compliant with respect to the summary. The second paragraph of the summary provides a concise explanation and support for Claim 1."


**REMARKS**

In view of the foregoing, Applicants respectfully request that the non-compliant status be withdrawn, and that the Appeal Brief filed April 3, 2007, be forwarded to the Board.

Please grant any extensions of time required to enter this response or any additional required fees, the Commissioner is authorized to charge necessary fees for such an extension to Deposit Account 06-0916.

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: August 23, 2007

By:   
David S. Forman  
Reg. No. 33,694  
(202) 408-4000